HONOURABLE SRI JUSTICE J.CHELAMESWAR
AND
HONOURABLE SRI JUSTICE D.APPARAO

Dated: 30-10-2006

WRIT PETITION No. 20265 of 2006

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Between:

Devapatila Bhageeradha Reddy s/o Bhaskar Reddy, aged 32 years, R/o Kothapalli village, Thimmasamudram (P) T.Sundupalli (M), Kadapa District.

…Petitioner

And

1. The Collector and District Magistrate, Chittoor,
2. The Government of A.P. represented by its Chief Secretary, Hyderabad,
3. The Superintendent of Central Prison, Cherlapally.

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Respondents.

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WRIT PETITION No. 20265 of 2006

ORDER (Per Hon'ble Sri Justice D.Apparao):

Sri Devapatla Sreenivasula Reddy was ordered to be detained by the 1st respondent- Collector and District Magistrate, Chittoor, in Roc.C2/8032/2006, dated 11-08-2006 under Section 3 (1) (2) read with Section 2 (a) and 2 (g) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

2. The petitioner, the nephew of the detenu D. Sreenivasula Reddy, challenges the validity of the order of the 1st respondent, as illegal, arbitrary, and unconstitutional and seeks a declaration that the order is bad in law and prays that the detenu to be released forthwith by granting a writ of habeas corpus.

3. The detaining authority having considered that the detenu was involved in illicit cutting, dressing, storing and transporting Red Sanders, an endangered species causing willful destruction and damage and loss to the National Wealth opined that he is a 'goonda' within the meaning of the definition of the Act and passed order of detention.

4. The following cases were considered for the said detention.

1) That on 26-12-2004 at 6 p.m. the deceased along with accomplices P. Ramana and P. Subbarayudu were found removing 20 Red Sander logs, weighing 492 kgs valued at Rs. 21,600/- and on seeing the forest officials all of them were escaped. On 3-2-2005 the detenu was arrested and produced before the learned Additional Judicial First Class Magistrate, Rayachoti who remanded him to judicial custody. A case in O.R. No. 44/2004-05 under sec. 20 (1) © (ii) (iii) (iv) and (x), Section 29 (4) r/w 58 of A.P. Forest Act, 1967 and Section 379 IPC was registered and the investigation is still pending.
2) That on 2-2-2005 at 5 p.m. the forest officials noticed the detenu along with accomplices was removing 30 Red Sander logs valued at Rs.4,600/- and on seeing the forest officials all of them escaped. On 3-2-2005 the detenu was arrested and produced before the learned Additional Judicial First Class Magistrate, Rayachoti who remanded him to judicial custody. A case in O.R.No. 147/2005-06 u/s 20 (1) © (ii) (iii) (iv) and (x) Section 29 (4) r/w 58 of A.P. Forest Act, 1967 and Section 34 IPC, Section 107 IPC, Section 120 (B) IPC and Section 379 IPC was registered and the investigation is still pending.
3) That on 01-04-2005 the forest officials intercepted a lorry tanker bearing No. TN 07 AC 1473 at Yerravaripalem and arrested two persons K. Mohan and K. Guna and on enquiry they confessed that they along with the detenu had cut 115 dressed Red Sander logs, worth Rs. 4,00,000/-. A case in O.R.No. 9/2005-06, dated 1-4-2006 u/s 120(B) IPC, Section 379 IPC under the relevant penal sections of the A.P. Forest Act, 1967 and Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules, 1969 was registered and the investigation is still pending. The detenue was arrested and produced before the learned Additional

Judicial First Class Magistrate, Rayachoti, who remanded him to judicial custody.

4) That on 3-4-2005 the forest officials had intercepted the lorry bearing No. AP 02T 6235, found 140 Red Sanders worth Rs. 1,01,442/-. The persons in the vehicles were fled away. On 19-04-2005 one Pathan Shati was arrested and he confessed the involvement of the detenue in organizing the removal of Red Sanders. A case in O.R. 1/2005-06 dt. 12-4-2005 u/s 20 (i) © (ii) (iii) and (x) Section 29 (4) r/w 58 of A.P. Forest Act, 1967 , Section 34 IPC, Section 107, 149 and 379 IPC was registered and the investigation is still pending. Subsequently the detenu was arrested and produced before the learned Addl. Judicial First Class Magistrate, Rayachoti who remanded him into judicial custody.

5) That on 8-4-2006 while the forest officials are patrolling duty they found the detenu along with their associates trying to smuggle 19 Red Sander logs, worth Rs. 20,680/- A case in O.R. No. 2/2006-07 dated 8-4-2006 u/s 20 (i) © (ii) (iii) and (x), Section 29 (4) r/w 58 of A.P. Forest Act, 1967, Section 34 IPC, Section 107, 149 and 379 IPC was registered and the investigation is still pending. The detenu was arrested and produced before the learned Additional Judicial First Class Magistrate, Rayachoti, who remanded him to judicial custody.

6. Through G.O. Rt. No. 4340, General Administration (L&O.II) Department, dated 21.08.2006, the Government accorded its approval of the detention order. The Advisory Board confirmed the order of detention in its meeting held on 12.09.2006. Based on the said recommendation of the Advisory Board, the Government confirmed the orders of detention in G.O.Rt.No. 4826, General Administration (Law & Order.II) Department, dated 16.09.2006 for

a period of 12 months from the date of detention.

7. The brother of the detenu challenged the detention on the grounds that the detention order cannot be passed on stale grounds and further there was non-application of mind. The first incident was on 26.12.2004 while the last incident was on8-4-2006. There is a gap of 18 months. In order to get over the non-attracting of the provisions of Forest Act to the Act, Section 120 (B) and 107 IPC were added. Section 379 IPC was deliberately introduced. Importantly, the order granting bails was not considered by the detaining authority. Out of the 5 incidents referred to in the grounds of detention, bail was granted in regard to the incidents 1, 2 and 5. Since there was total non-application of mind and non-consideration of this aspect, the order of detention is vitiated.

8. The learned counsel for the petitioner did not advert to the other contentions, obviously in view of the decisions of the Hon'ble Supreme Court. The main thrust of the argument is that the fact that the detenu was released on bail in the cases mentioned in the grounds 1, 2 and 5 was not noticed. The fact of granting of bail was not brought to his notice nor the said aspect was gone into by the detaining authority. This is bad under law.

Along with the writ petition, he enclosed copies of orders where the detenu was released on bail. In O.R. No. 44/2005 the 1st ground of detention bail was granted on 15-2-2005. In O.R. No. 2/2006-2007 the 5th ground of detention bail was granted on 12-4-2006. The order of detention was made on 11-8-2006, subsequent to the orders of granting bail. The fact that the detenu was released on bails in those cases was not disputed. So also the

fact of non-consideration of this aspect while ordering detention.

9. As early as in **M.AHAMEDKUTTY v. UNION OF INDIA AND ANOTHER**[1]**,** the Supreme Court, in this regard, observed:

> "It is also imperative that if the detenu was already in jail the grounds of detention are to show that awareness of that fact on the part of the detaining authority, otherwise there would be non-application of mind and detention order vitiated thereby. In the present case it appears from the records that the bail application and the bail order were furnished to the detaining authority on his enquiry and it was stated in the grounds of detention that the detenu was remanded to judicial custody and he was subsequently released on bail. The bail application contained the grounds for bail including that he had been falsely implicated as an accused in the case at the instance of persons who were inimically disposed towards his, and the bail order contained the conditions subject to which the bail was granted. Considering the facts the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied o by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. It must therefore, beheld that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article
> 22 (5) rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case."

10. Following the above decision, in **ABDUL SATHAR IBRAHIM MANIK v. UNION OF INDIA**[2]**,** the Supreme Court reiterated:

> "In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail

should necessarily be placed before the authority and the copies should also be supplied to the detenu."

11. In the subsequent decision reported in **AHAMED NASSAR v. STATE OF TAMILNADU AND OTHERS**[3], the very same contention was considered and the Supreme Court opined that failure to place all relevant material and non-consideration thereof by detaining authority vitiates the order of detention.

12. In view of the above decisions, we must hold that non-placing of this relevant material before the detaining authority vitiates the order of detention. We may clarify that the learned counsel for the detenu did not press the other contentions that were raised in the writ petition. Therefore, we are expressing no opinion on the said grounds. Importantly, the failure in recording the enlargement of the detenu on bail is undoubtedly a ground to quash the order of detention. The decisions relied above apply in all fours to the facts of the present case. Therefore, the order of detention is liable to be quashed.

13. In the result, the writ petition is allowed. The order of detention is set aside. The detenu shall be released forthwith. No costs.

(J.CHEMALESWAR, J)

(D.APPARAO, J)

Dated: 30 -10-2006

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Issue CC today
(B/o)
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[1] (1990) 2 Supreme Court Cases 1

[2] AIR 1991 S.C. 2261

[3] 1999 Supreme Court Cases (Cri) 1469